

REMARKS

Entry of the foregoing amendments is respectfully requested.

Summary of Amendments

By the foregoing amendments claim 12 is amended, claims 18, 21, 22, 25 and 27-31 are cancelled and claims 32-40 are added, whereby claims 12-17, 19, 20, 23, 24, 26 and 32-40 will be pending, with claims 12 and 36 being independent claims.

Support for the present amendments and the new claims can be found throughout the present specification and the original claims.

Applicants emphasize that the amendment to claim 12 and the cancellation of claims 18, 21, 22, 25 and 27-31 are without prejudice or disclaimer, and Applicants expressly reserve the right to prosecute the cancelled claims and claim 12 in its original, unamended form in one or more continuation and/or divisional applications.

Summary of Office Action

As an initial matter, Applicants note with appreciation that the Examiner has indicated consideration of the Supplemental Information Disclosure Statement filed May 10, 2006 by returning a signed and initialed copy of the form PTO-1449 submitted therein.

Applicants further note that the rejections set forth in the previous Office Action are moot in view of the new ground(s) of rejection set forth in the present Office Action.

Claims 12, 16-18 and 20-31 are rejected under 35 U.S.C. § 102(b) as allegedly

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being anticipated by Henkel KGaA, DE 4,010,393 (hereafter "HENKEL") as evidenced by Schambil et al., U.S. Patent No. 6,086,787 (hereafter "SCHAMBIL").

Claims 12, 13, 16-18, 20, 23, 27 and 28 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Rhone-Poulenc Chimie, EP 0 633 018 A1 (hereafter "RHONE").

Claims 13-15 and 19 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over HENKEL in view of SCHAMBIL and Rosano, U.S. Patent No. 4,146,499 (hereafter "ROSANO").

Response to Office Action

Reconsideration and withdrawal of the rejections of record are respectfully requested in view of the foregoing amendments and the following remarks.

Response to Rejection of Claims under 35 U.S.C. § 102(b) over HENKEL

Claims 12, 16-18 and 20-31 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by HENKEL as evidenced by SCHAMBIL, a U.S. family member of HENKEL. In this regard, the Office Action refers especially to Beispiele 1-2, Tabelle 1, and the abstract of HENKEL.

Applicants respectfully submit that independent claim 12 submitted herewith is not anticipated by HENKEL for at least the reason that it recites that the cosmetic preparation claimed therein is a translucent or transparent oil-in-water microemulsion.

In contrast, the cosmetic preparation of HENKEL is not a translucent or transparent oil-in-water microemulsion but a cream which is prepared from the "microemulsion"

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described by HENKEL by adding to the latter at least one consistency generator selected from water-soluble polymers and W/O emulsifiers to afford a thickened (non-flowing) emulsion which exhibits plastic behavior at 20°C with a yield point of at least about 5 Pascal. In this regard, the abstract and claim 1 of SCHAMBIL may, for example, be referred to. Particularly from col. 1, lines 32-50 of SCHAMBIL it becomes clear that the “microemulsions” described in HENKEL are not *per se* useful for cosmetic purposes (emphases added):

Although high particle fineness and stability are desirable for cosmetic purposes, cosmetic emulsions at the same time should not be free-flowing, but should have an ointment-like or creamy consistency for a number of applications. In the conventional production of creams, this was achieved by increasing the percentage content of the inner phase (oil component), by using solids fats or waxes or by using soaps or other thickening or gel-forming anionic emulsifiers. The measures mentioned added considerably to the cost of the emulsion systems or reduced the fineness and stability of the emulsions and impaired their dermatological compatibility or the cosmetic feeling of the skin.

It has now been found that creams of the oil-in-water type can be produced with considerable advantage from liquid oil components by initially preparing a low-viscosity, very fine-particle oil-in-water emulsion in known manner with phase inversion and subsequently thickening the emulsion by consistency-generating co-emulsifiers or thickening hydrophilic polymers.

Accordingly, HENKEL not only fails to disclose a cosmetic preparation which is a translucent or transparent oil-in-water microemulsion, but even teaches away therefrom.

Further, HENKEL does not appear to disclose any specific utility for the cosmetic creams disclosed therein, let alone that these creams can be used as cosmetic skin or hair cleansing preparations, cosmetic skin or hair care preparations or deodorant preparations as recited in the present independent claims. In fact, apart from the essential ingredients of the creams disclosed therein, HENKEL does not appear to disclose any other ingredients, additives, auxiliaries, etc. which would provide an indication which specific type(s) of

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cosmetic product(s) the creams of HENKEL are to be used for.

Independent claim 36 submitted herewith is not anticipated by HENKEL, either. For example, this claim recites a list of (ethoxylated) O/W emulsifiers which are neither taught nor suggested by HENKEL. In particular, the only ethoxylated emulsifiers disclosed by HENKEL appear to be those designated as emulsifiers (B). The emulsifiers (B) of HENKEL are nonionic ethylene oxide adducts with C₁₆₋₂₂ fatty alcohols and ethylene oxide adducts with partial esters of a C₃₋₆ polyol and C₁₄₋₂₂ fatty acids. See col. 3, lines 16-28 of SCHAMBIL. None of these classes of emulsifiers is listed in present independent claim 36.

Applicants submit that for at least all of the foregoing reasons, HENKEL does not anticipate (or render obvious) the subject matter of any of the present independent claims (and the claims dependent therefrom), wherefore the rejection under 35 U.S.C. § 102(b) over HENKEL should be withdrawn, which action is respectfully requested.

Response to Rejection of Claims under 35 U.S.C. § 102(b) over RHONE

Claims 12, 13, 16-18, 20, 23, 27 and 28 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by RHONE. In this regard, the Office Action asserts that the Table at page 5 of RHONE “discloses distearate PEG 6000 and Polysorbate 20 (sorbitan monolaurate polyoxyethylene (20)), which are ethoxylated o/w emulsifiers and glycol distearate, which is a w/o emulsifier.” See page 4, Section 5.

Applicants respectfully submit that RHONE does not anticipate present independent claim 12 at least for the reason that RHONE does not disclose a translucent or transparent oil-in-water microemulsion as recited in claim 12, let alone a cosmetic preparation which is a microemulsion. For example, the preparation of Example 1 of RHONE specifically

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pointed out in the present Office Action is a shampoo which is a viscous, opaque liquid (page 5, line 40 of RHONE).

Further, the shampoo of Example 1 of RHONE contains much more O/W emulsifier than recited in present claim 12. For example, this shampoo contains 36 % by weight of sodium laureth sulfate alone.

This is also one of the reasons why RHONE fails to teach or suggest the subject matter of present independent claim 36. Another reason is that RHONE fails to disclose cosmetic preparations based on a translucent or transparent oil-in-water microemulsion as recited in this claim. In this regard, Applicants note that even if one were to assume, *arguendo*, that mixing the self-emulsifiable mixtures of RHONE with water affords O/W microemulsions, these "microemulsions" would consist of water, a silicone oil and the specific polyoxyalkylated polyoxyethylenated polydimethylsiloxanes disclosed therein; see, e.g., abstract and claim 8 of RHONE. Cosmetic preparations based on these "microemulsions" would clearly not be based on the microemulsion recited in present claims 36.

Of course, the fact that an assumed (O/W) "microemulsion" according to RHONE would be a composition based exclusively on water and silicon compounds is also one of the reasons why RHONE does not teach or suggest the subject matter of claim 12.

Applicants submit that for at least all of the foregoing reasons, RHONE neither anticipates nor renders obvious the subject matter of any of the present independent claims (and the claims dependent therefrom), wherefore the rejection under 35 U.S.C. § 102(b) over RHONE should be withdrawn, which action is respectfully requested.

Response to Rejection of Claims under 35 U.S.C. § 103(a)

Claims 13-15 and 19 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over HENKEL in view of SCHAMBIL and ROSANO. In this regard, the Office Action essentially asserts that HENKEL differs from the rejected claims merely in the incorporation of conventional cosmetic ingredients and alleges that ROSANO teaches the ingredients recited in the rejected claims for incorporation into a microemulsion.

Applicants respectfully submit that, as set forth above, the cosmetic preparations recited in the claims submitted herewith differ from the compositions of HENKEL at least in that they comprise O/W emulsifiers which are neither taught nor suggested by HENKEL (claim 36) or that HENKEL does not teach or suggest a cosmetic preparation which is a microemulsion (claim 12).

ROSANO obviously does not cure these deficiencies of HENKEL. For example, ROSANO does not teach or suggest employing a microemulsion *per se* as a cosmetic preparation, let alone as one of the cosmetic preparations recited in present claim 12. Neither does ROSANO appear to disclose any of the O/W emulsifiers recited in present independent claim 36.

In view of the foregoing, there appears to be no need to comment on the allegations regarding ROSANO which are set forth in the present Office Action. It is emphasized, however, that Applicants' silence in this regard is by no means to be construed as Applicants' admission that any of these allegations is meritorious.

Applicants submit that at least all for the reasons set forth above, the rejection of claims 13-15 and 19 under 35 U.S.C. § 103(a) over HENKEL in view of SCHAMBIL and ROSANO is unwarranted, wherefore withdrawal thereof is respectfully requested.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
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A handwritten signature in black ink, appearing to read "Neil F. Greenblum", written over a horizontal dashed line.

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